IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10976 of 2004

JIGNESH DINESHBHAI PATEL

Versus

DEAN/SANCHALAK

Appearance:

1. Special Civil Application No. 10976 of 2004

MR AN PATEL for Petitioner No. 1-2

MR DC DAVE for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

MR MITUL K SHELAT for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of Order: 27/09/2004

ORAL ORDER

Due to paucity of time, it is not possible to pass a reasoned judgment. Hence, operative portion of the order is declared today. However, considering the urgency in the matter, some reasons are given hereinbelow and an elaborate and reasoned judgment and order will follow hereafter.

2. Pursuant to the advertisement issued by the respondent No.1, the petitioners had applied for getting admission into 1st year MBBS course. At the time of submission of the application forms, the petitioners were informed to remain present at 9.30 A.M. on 31st July 2004 for the purpose of counselling before admission into the said course. By way of abundant caution, a public advertisement was also given in the local newspapers, namely "Divya Bhaskar" and "The Times of India" calling upon the candidates to remain present at 9.30 A.M. on 31st July 2004 for the purpose of counselling. The merit list came to be published wherein the petitioner No.1 was placed at Serial No. 72 and the petitioner No.2 stood at Serial No. 79. It is the case of the petitioners that on 31st July 2004 they were late by only 5-10 minutes and when they reached at the place of counselling the counselling of the student at Serial No. 80 was going on and therefore the petitioners are treated as late-comers.

It is also further submitted that at the relevant time when the petitioners reached the place of counselling as stated above counselling of candidate/student who was at Serial No. 80 in the merit list was going on and out of 50 seats only 36 seats were filled-in and that the students who are less meritorious than the petitioners are granted admission into the 1st year MBBS course, and therefore it is requested to allow the present Special Civil Application as, if the petitioners are not granted admission in MBBS then the entire career of the petitioners would be ruined.

3. Shri DC Dave, learned advocate appearing on behalf of the respondent institution has relied upon the provisions of Rule 19 and has submitted that since at the time of counselling the petitioners did not remain present admissions qua the petitioners are forfeited and the candidates who are next to the petitioners in the merit list are given admissions. At this stage, Shri Patel, learned advocate appearing on behalf of the petitioners, has submitted that subsequently 8 seats had fallen vacant and hence reshuffling was going on and therefore considering the facts and circumstances the case of the petitioners is required to be considered against those seats which had fallen vacant subsequently at the time of reshuffling.

4. Considering the provisions, more particularly Rule 19 of the Rules for admission into 1st year MBBS course, so far as respondent No.1 institution is concerned, in view of the fact that as the petitioners did not remain present at the time of counselling when their turn came, their admissions are forfeited and therefore at the time of reshuffling only those candidates who were in the waiting list were required to be considered for admission into 1st year MBBS course by filling-up the seats which had fallen vacant subsequently. This Court had asked Shri Dave, learned advocate to give the particulars with regard to students who did not join and whose seats had fallen vacant subsequently which were required to be filled-in on reshuffling, and Shri Dave has submitted that the students who were at Serial No. 21, 28, 29, 49, 58, 59, 70 and 81 in the merit list are those students who did not join and opt for admission and therefore those seats were required to be filled-in on reshuffling. Therefore, considering the fact that the petitioner No.1 is at Serial No. 72 and the petitioner No.2 is at Serial No. 79 in the merit list, the seat which was offerred to a candidate who was at Serial No. 81 could not have been offerred to the petitioners earlier and therefore at

least qua the said seat the case of the petitioners are required to be considered on merits at the time of reshuffling and giving admission on the seat (on the seat of a student who was at Serial No. 81 in the merit list) at the time of reshuffling.

5. For the reasons stated above, the petition partly succeeds. The respondent No.1 is directed to consider the case and grant admission to the petitioner No.1 who was at Serial No. 72 in the merit list for admission into 1st year MBBS course at the time of reshuffling of student who was at Serial No. 81 in the merit list and who did not join. This Court has granted ad-interim relief directing the respondent No.1 to keep two seats vacant and therefore now it will be open for the respondents to give admission on the one remaining seat on merits from and amongst the candidates/students who is in waiting list. The Office is directed to refund the sum of Rs. 5000/= to the petitioners by Account Payee cheque which is deposited by the petitioners pursuant to the order of this Court towards costs. D.S. today.

[M.R. Shah, J.]

rmr.